



May 30, 2008

Jeff Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 JUN -3 P 3:53

Re: MUR 5999 (Freedom's Watch)

Dear Mr. Jordan:

This letter responds to the complaint filed against Freedom's Watch, Inc. ("FW") by the Democratic Congressional Campaign Committee ("DCCC") concerning the communication "Family Taxes". The DCCC's complaint¹ alleges improper "coordination" (11 C.F.R. 109.21) but consists largely of politically charged rhetoric. Its accusation rests solely on the existence of the term "NRCC" in the metadata of the script that FW released publicly as "Family Taxes" began running on Louisiana television stations on April 15, 2008.² The existence in the metadata of "NRCC" (a reference to the National Republican Congressional Committee) has an innocent explanation that requires dismissal of this complaint.

As the accompanying affidavits demonstrate, Patrick McCarthy, the partner with Designated Market Media, LLC ("DMM") hired by FW to produce the ad, did work for the NRCC in 2006, but not in 2007 or 2008. Affidavit of Patrick McCarthy (attached as Exhibit B) at ¶6. In preparing "Family Taxes", he took a template he had used for the NRCC in 2006 or earlier, wrote over the old script and prepared an entirely original script for FW. *Id.* at ¶7-8. McCarthy admits he did not know "NRCC" existed on the script's metadata, and that it got left on the script FW released. *Id.* at ¶8. That is not "illegal coordination" as the DCCC alleges.

¹ As an initial matter, the complaint fails to meet the requirements set forth in 11 C.F.R. 111.4(c) by failing to properly differentiate which statements are based upon personal knowledge and which statements are based upon information and belief. For this reason alone, the complaint should be dismissed.

² FW has previously referred to the advertisement that is the subject of the DCCC complaint as "Family Taxes" on FEC Form 9 filed on April 16, 2008 and attached hereto as Exhibit A.

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More specifically, McCarthy states in his sworn affidavit that he used the same word processing template that he used when working for the NRCC in 2006. *Id.* at ¶7. McCarthy testifies that he used an old NRCC template, deleted the words on the template and created "Family Taxes" for FW. *Id.* at 7-8. McCarthy takes responsibility for not erasing the term "NRCC" in the metadata. *Id.* at ¶8. McCarthy also swears that neither he nor anyone in his firm had worked for or is working for the NRCC in 2007 or 2008 or had any contact with the NRCC in 2007 or 2008 about this script or any other script. *Id.* at ¶5 & ¶10. DMM signed and acknowledged the "Freedom's Watch Firewall Policy" which specifically prohibits any FW vendor from engaging in any communications that would constitute coordination. (Attached as Exhibit C is a copy of the Freedom's Watch Firewall Policy signed and acknowledged by Michael McElwain, a partner at DMM).³ In his affidavit, McCarthy specifically states that he had no communications with the NRCC regarding the preparation of the "Family Taxes" script or for any other script for a FW advertisement nor did he have any communications with the NRCC regarding any other matter pertaining to FW's plans or strategies. *Id.* at ¶10.

The complaint also contains an unfounded allegation of coordination concerning Carl Forti, who is FW's Executive Vice President of Issue Advocacy (and not its "head", as the DCCC incorrectly alleges). See attached Affidavit of Carl Forti (attached as Exhibit E) ¶ 1. Forti did work for the NRCC prior to 2007, ending his employment there on or about December 31, 2006. *Id.* at ¶3. Although the complaint insinuates that Forti's employment more than a year and six months prior to joining FW somehow justifies the allegation of coordination, the complaint fails to specifically allege a violation of 11 CFR 109.21(d)(5), presumably since Forti ceased working for the NRCC some fourteen (14) months prior to joining FW.⁴ Forti also states in his affidavit that he had no communications with the NRCC regarding the script for "Family Taxes" or any other script for a FW advertisement. Exh. E ¶ 8. Furthermore, both McCarthy and Forti confirm that the NRCC did not provide them with any computer, word processing software or any data files to assist FW in preparing the "Family Taxes" (or any other) communication. Exh. B ¶9 and Exh. E ¶7.

FW has consistently exercised its First Amendment rights as specifically recognized on numerous occasions by the United States Supreme Court, most recently in Fed. Elec. Comm'n v. Wisconsin Right to Life, 127 S.Ct. 2652, 2666 (2007) ("The freedom of speech . . . guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.") (citations omitted). As was widely reported on by news organizations during the fall months of 2007, FW made significant investments of its resources in running advertisements that supported the American troops in their efforts in Iraq and

³ Michael McElwain of DMM also signed an addendum to the FW firewall policy that specifically confirmed DMM's lack of any communications with any candidate or their candidate committee for the special election to fill the Louisiana 6th Congressional District on May 3, 2008. A copy of the "Addendum to Freedom's Watch Vendor Firewall Policy" signed by Michael McElwain is attached as Exhibit D. McElwain also confirmed the lack of any communications, cooperation or consultation by DMM with any Louisiana state party committee, national party committee or any other party committee regarding their plans, needs, strategies or activities for the May 3, 2008 special election to fill the Louisiana 6th Congressional District. *Id.*

⁴ In order to satisfy the "conduct" prong of the coordination analysis based on FW having hired an employee or independent contractor of the NRCC, Forti would, at the very least, had to have worked at the NRCC within 120 days of joining FW – a critical fact that undermines any argument by the DCCC that FW has coordinated with the NRCC by virtue of Forti's employment at FW. See 11 C.F.R. 109.21(d)(5)(i).

supported the efforts of our military leaders in their efforts to direct our country's efforts in Iraq. FW has been a consistent voice on the issue of United States public policy regarding the War on Terror and our country's efforts in Iraq. In addition, FW has been actively engaged in the public policy debate on other critical issues such as tax relief, gas prices and federal immigration policy.

In conclusion, there is no evidentiary basis for concluding that FW engaged in any type of communication with the NRCC regarding the "Family Taxes" advertisement, whether that is the content of "Family Taxes" or any other matter related to the decision to create, produce and air the communication. Thus, FW disputes and, by this response, specifically refutes the DCCC's allegations. This response, along with all attachments and exhibits hereto, provides a sufficient and complete basis for the Commission to dismiss this Complaint without any further investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Ryan Teague". The signature is fluid and cursive, with the first name "W." being more distinct than the last name "Teague".

W. Ryan Teague
Freedom's Watch General Counsel

EXHIBIT A



Ryan Teague <rteague@freedomwatch.org> on 04/26/2008 03:45:27 PM

To: "2022190174@hqs.gov" <2022190174@hqs.gov>
cc: Ryan Teague <rteague@freedomwatch.org>

Subject: Freedom's Watch - 4/26/2008 - FEC Form 9

Please find attached the FEC Form 9, "24 Hour Notice of Disbursements/Obligations" for the Freedom's Watch television advertisement entitled "Family Taxes."

Ryan Teague, Esq.



Freedom's Watch SCaps05041612220.pdf

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COUNSEL

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FEC FORM 9

24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR ELECTIONEERING COMMUNICATIONS

1. Person Making the Disbursements/Obligations

(a) Name Freedom's Watch Inc.		(b) FEC Identification Number C
(c) Address (include zip code) <input type="checkbox"/> District of Columbia <input type="checkbox"/> Other State/Foreign Country 401 9th St. NW		
(d) City, State and ZIP Code Washington, DC 20004		
(e) Name of Employer or Political Party or Union Freedom's Watch, Inc.		(f) Occupation

2. Is This Statement or Amended	X New	4. Covering Period From 04 15 2008 Through 04 15 2008

3. (a) Date of Public Meeting(s) 04 15 2008 (b) Communication Title **FAMILY TAXES**

4. The filer is (a) ☐ Individual (b) ☐ Unincorporated Organization (c) ☐ Qualified Nonprofit Corporation (11 CFR 114.10)
 (d) ☒ Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.10
 (e) Other, specify: _____

7. If the filer is an individual, unincorporated organization or qualified nonprofit corporation, were the disbursements made exclusively from donations to a segregated bank account? Yes No X

5. Custodian of Records

(a) Name Douglas W. Robinson
(b) Address (include full name) 401 9th St. NW
(c) City, State and ZIP Code Washington, DC 20004
(d) Name of Employer or Political Party or Union Freedom's Watch, Inc.
(e) Occupation Chief Financial Officer

6. Total Donations This Statement , 0.00

10. Total Disbursements/Obligations This Statement , 128,966 .50

Under penalty of perjury, I certify that this statement is true, correct and complete.

TYPE OR PRINT NAME OF PERSON FURNISHING FORM **Douglas W. Robinson**

SIGNATURE *DW Robinson* DATE **04/15/2008**

NOTE: Submission of false, erroneous and/or deceptive information under this notice is subject to the penalties of 18 USC 1001.

FEC FORM 9000a, 03/2007

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List of Person(s) Starting/Managing Control
(see additional pages as necessary)

PAGE 2 OF 4

11. Person(s) Starting/Managing Control

<p>A. Person Mal Sembler Address (street and city) 5858 Central Avenue City, State, Zip St. Petersburg, FL, 33707-1726 Telephone Number The Sembler Company </p>	<p>Position Chairman </p>
<p>B. Person Matthew Brooks Address (street and city) 80 F Street NW Suite 100 City, State, Zip Washington, DC 20001 Telephone Number Republican Jewish Coalition </p>	<p>Position Executive Director </p>
<p>C. Person Ari Fleischer Address (street and city) 624 Old Post Road City, State, Zip Bedford, NY 10506 Telephone Number Fleischer Communications </p>	<p>Position President </p>
<p>D. Person William Weidner Address (street and city) 3355 Las Vegas Blvd South City, State, Zip Las Vegas, NV 89109 Telephone Number Las Vegas Sands Corporation </p>	<p>Position President </p>
<p>E. Person Carl Forti Address (street and city) 401 5th St NW City, State, Zip Washington, DC 20004 Telephone Number Freedom's Watch Inc. </p>	<p>Position Executive Vice President </p>

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SCHEDULE B-A
Donations Received

PAGE 3 OF 6

A. Full Name of Donor <hr/> <hr/>		Date of Receipt <hr/> <hr/>
Address of Donor <hr/> <hr/>		Amount <hr/> <hr/>
B. Full Name of Donor <hr/> <hr/>		Date of Receipt <hr/> <hr/>
Address of Donor <hr/> <hr/>		Amount <hr/> <hr/>
C. Full Name of Donor <hr/> <hr/>		Date of Receipt <hr/> <hr/>
Address of Donor <hr/> <hr/>		Amount <hr/> <hr/>
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E. Full Name of Donor <hr/> <hr/>		Date of Receipt <hr/> <hr/>
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OPTIONAL: If Donations This Page (optional)		
TOTAL: This Page (not page 64; line number only)		

THE FERRY VILLAGE, CHICAGO

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Federal Election Commission	
ENVELOPE REPLACEMENT PAGE FOR INCOMING DOCUMENTS	
The FEC added this page to the end of this filing to indicate how it was received.	
<input type="checkbox"/> Hand Delivered	Date of Receipt
<input type="checkbox"/> USPS First Class Mail	Postmarked
<input type="checkbox"/> USPS Registered/Certified	Postmarked (R/C)
<input type="checkbox"/> USPS Priority Mail	Postmarked
Delivery Confirmation™ or Signature Confirmation™ Label <input type="checkbox"/>	
<input type="checkbox"/> USPS Express Mail	Postmarked
<input type="checkbox"/> Postmark Illegible	
<input type="checkbox"/> No Postmark	
<input type="checkbox"/> Overnight Delivery Service (Specify):	Shipping Date
	Next Business Day Delivery <input type="checkbox"/>
<input type="checkbox"/> Received from House Records & Registration Office	Date of Receipt
<input type="checkbox"/> Received from Senate Public Records Office	Date of Receipt
<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input checked="" type="checkbox"/> Other (Specify): <i>Email</i>	Date of Receipt or Postmarked <i>4/16/08</i>
<i>DAED</i> PREPARER (3/2008)	<i>4/16/08</i> DATE PREPARED

Exhibit B

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BEFORE THE FEDERAL ELECTION COMMISSION

FREEDOM'S WATCH, INC. } MUR 5999

AFFIDAVIT OF PATRICK MCCARTHY

I, Patrick McCarthy, make the following sworn statement:

- 1. Upgrade Films, a wholly owned subsidiary of Designated Market Media, LLC (collectively "DMM"), served as an independent contractor for Freedom's Watch, Inc. ("FW") with regard to the production of an advertisement titled "Family Taxes". The ad began airing on Louisiana television stations beginning on April 15, 2008. I, as a partner of DMM, was the individual responsible for handling work for FW at DMM and, more specifically, I was the individual responsible for creating the script and the production of the advertisement titled "Family Taxes" for FW.**
- 2. I am aware of the complaint filed by the Democratic Congressional Campaign Committee ("DCCC") on April 16, 2008, in this matter regarding the creation of the document that served as the script for "Family Taxes". I am also aware of the Exhibit A attached to that complaint filed by the DCCC which is a copy of the script for "Family Taxes".**
- 3. I have personal knowledge regarding the creation of the document that served as the script for "Family Taxes" and, furthermore, I am the individual responsible for the creation of the document that served as the script for "Family Taxes".**
- 4. DMM partner Michael McElwain prepared a signed acknowledgement on behalf of DMM of the FW Vendor Firewall Policy, attached as Exhibit "A".**
- 5. DMM has not prepared or created any script or engaged in any other type of work for the National Republican Congressional Committee ("NRCC") during the year of 2007 or this year (2008).**
- 6. I, Patrick McCarthy, have not prepared or created any script or engaged in any other type of work for the National Republican Congressional Committee ("NRCC") during the year of 2007 or this year (2008). I did work for the NRCC in 2006.**
- 7. I confirm that the "metadata" or properties on the word processing document used to prepare the script for "Family Taxes" includes the term "NRCC". However, there is a simple explanation for why this happened. When preparing a script for a client, I use word processing templates I've used before. Exhibit A to the DCCC's FEC complaint is an example of how the template separates the description of the video description from the audio script. As a matter of pattern**

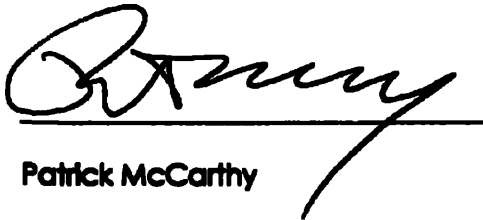
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and practice, I retrieve an old word processing template for each new script I create, delete the text of the prior script, and create the new script. In this case, I used a template I had used for the NRCC in 2006 or earlier.

8. With regard to the script for "Family Taxes", I prepared and created the script for "Family Taxes" using the word processing template described in paragraph 7. The term "NRCC" does not appear in the text of the script of "Family Taxes" and it does not appear in the video portion of the advertisement. At the time that I created the script for "Family Taxes", I was not aware that the term "NRCC" appeared in the metadata or properties on the word processing template.
9. The NRCC did not provide me or DMM with any computer, word processing software or any data files for preparing or creating the script for "Family Taxes" or the script for any other advertisement for FW.
10. With regard to the preparation and creation of the script for the "Family Taxes" advertisement, I had no communications with the NRCC regarding the preparation of the script for "Family Taxes" or any other script for FW advertisements nor have I had any communications with any person at the NRCC regarding any other matter related to FW or any of FW's plans or strategies.

AFFIANT SAYS NOTHING FURTHER

I swear that the foregoing statements are true and correct.


Patrick McCarthy

Date: May 30 2008

State of New York
District of Columbia
Washington County of Saratoga

Subscribed and sworn to before me this 30th day of May, 2008 by Patrick McCarthy.


NOTARY PUBLIC

JANE E. CORBETT
Notary Public, State of New York
Qualified in Saratoga County
No. 4002014
Commission Expires 5/28/11

EXHIBIT C

Freedom's Watch Firewall Policy

To: DMM

From: Ryan Tague
General Counsel

Re: Freedom's Watch Issue Advocacy Activities

This memorandum explains the Firewall Policy for the vendors that will be providing services to Freedom's Watch ("FW") in connection with its issue advocacy activities. Under the Federal Election Campaign Act and Federal Election Commission ("FEC") regulations (collectively "FECA"), there is no longer a need for a formal agreement or collaboration for a finding that an FW issue advocacy communication is coordinated with a campaign or political party committee. The regulations focus, instead, on the use or sharing of information about the projects, plans, needs or activities of a federal campaign or candidate or a political party committee with FW and its agents.

The FW Vendor Firewall Policy ("Firewall Policy") is designed to prevent the flow of private information about a campaign's or political party committee's plans, projects, needs or activities from the federal campaign or political party committee, or their agents of both, to FW and its vendors. Specifically, the Firewall Policy will prevent the receipt or suggestion or the use or conveyance of material private information about a campaign or political party committee that may be used in connection with any FW issue advocacy communication. Accordingly, this Firewall Policy is designed to ensure the FW's issue advocacy activities comply with the FECA.

In the current regulatory environment, we need to work together to ensure compliance with these burdensome rules.

If you have any questions about FW policies or procedures, please do not hesitate to contact the FW's Counsel, Ryan Tague.

Firewall Policy

Each FW vendor is prohibited from discussing the FW issue advocacy program with a federal candidate or campaign referenced in an FW issue advocacy communication, or political party committee, or the agents of both groups ("Conflicted Clients"). Similarly, the FW issue advocacy vendors are prohibited from having contact with any Conflicted Clients about any of the Conflicted Clients' plans, projects, needs or activities. Each FW vendor must attach a copy of its current client list to this signed policy and must update the list within one week of any changes to ensure that no inadvertent confusion vendor keeps alive. If FW determines that a vendor has a conflict with respect to a specific issue advocacy effort, FW will retain the services of a vendor that does not have such a conflict.

¹ A copy of the FEC regulations governing coordinated expenditures are attached to this memorandum. See 11 C.F.R. § 109.31. Please note that a federal district has held that certain FEC coordination regulations are unconstitutional. The FEC has appealed the decision and we will keep you updated concerning any material developments.

However, a vendor may establish an internal firewall policy designed to prevent the vendor's employees providing services to FW from also providing services to the Conflicted Clients. The vendor's internal firewall policy must be designed to prevent the employees providing services to FW discussing FW's laws advocacy programs with, or receiving material information from, the vendor's other employees providing services to any Conflicted Clients. Any FW vendor that has established an internal firewall policy must provide FW with a written copy of such policy to ensure compliance with the FW Firewall Policy.

If a vendor's structure and personnel precludes it from establishing such an internal firewall, the vendor is barred from serving as a common vendor with any Conflicted Clients.

Acknowledgement

I have read the FW Firewall Policy and agree to abide by its terms:

Michael McElwain
Name: Michael McElwain
Title: Partner
Vendor: Dan Media

4/15/08
Date

EXHIBIT D

Addendum

to Freedom's Watch Vendor Firewall Policy

DECLARATION of DMM

With specific regard to Freedom's Watch's plan to air a communication referencing Don Cazayoux, a federal candidate for the special election to fill the Louisiana 6th Congressional District seat, I confirm that I have had no communications with or cooperated or consulted with any candidate or their candidate committee for the Louisiana 6th Congressional District regarding their plans, needs, strategies or activities for the special election to be held May 3, 2008.

I have also had no communications with nor cooperated or consulted with any Louisiana state party committee, any national party committee or any other party committee regarding their plans, needs, strategies or activities for the May 3, 2008 special election to fill the Louisiana 6th Congressional District seat.

Signed: Michael McElroyName: Michael McElroyVendor: DMM MediaDate: 4/15/08

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Exhibit E

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BEFORE THE FEDERAL ELECTION COMMISSION

Freedom's Watch) MUR No. 5999

AFFIDAVIT OF CARL FORTI

I, Carl Forti, being of full age and sound mind, on my oath, affirm that:

- 1. I am currently the Executive Vice President of Issue Advocacy ("EVPIA") for Freedom's Watch ("FW").**
- 2. My first day of employment as EVPIA at Freedom's Watch was March 26, 2008.**
- 3. I ceased being employed at the National Republican Congressional Committee ("NRCC") on December 31, 2006.**
- 4. I am aware of the complaint filed by the Democratic Congressional Campaign Committee ("DCCC") on April 16, 2008 regarding the creation of the document that served as the script for "Family Taxes" and I am aware of Exhibit A attached to the DCCC complaint which is a copy of the script of "Family Taxes."**
- 5. I was the FW employee responsible for supervising the creation and production of the "Family Taxes" advertisement by Designated Market Media, LLC ("DMM") and I directed Patrick McCarthy of DMM to create the document that served as the script for the "Family Taxes" advertisement.**
- 6. I reviewed a document created by Patrick McCarthy that served as a draft script for the "Family Taxes" advertisement and I offered Patrick McCarthy of DMM recommended revisions to the draft script for "Family Taxes"; however, I am not responsible for creating the word processing document that was used as the script for "Family Taxes".**
- 7. The NRCC did not provide me with any computer, word processing software or any data files for assisting with drafting the script for "Family Taxes" or the script for any other advertisement for FW.**
- 8. I had no communications with any employees, executives or agents of the NRCC regarding the script for "Family Taxes" or any other script for a FW advertisement nor have I had any communications with any employees, executives or agents of the NRCC**

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regarding any other matter related to any advertisement or other form of communication created, produced or aired by FW.

Affiant says nothing further.

I swear the foregoing statements are true and correct.




Carl Forti

Date: May 27, 2008

Subscribed and Sworn before me this 27th day of May, 2008 by Carl Forti.

District of Columbia,

Washington



Thelma L. Fedor
Notary Public, District of Columbia
My Commission Expires 4-14-2009

Notary Public

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